

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

*In re Dealer Management Systems Antitrust
Litigation, MDL 2817*

This document relates to:

*Motor Vehicle Software Corp. v. CDK Global,
LLC, et al., Case No. 1:18-cv-00865 (N.D. Ill.)*

No. 1:18-CV-864

Hon. Robert M. Dow, Jr.

Magistrate Judge Jeffrey T. Gilbert

**DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY'S
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Local Rule 56.1(a)(3), Defendant The Reynolds and Reynolds Company (“Reynolds”) hereby submits this statement of undisputed material facts in support of its motion for summary judgment.

Reynolds submits this statement only for the purpose of establishing facts as to which there is no genuine issue, warranting judgment for Reynolds as a matter of law, and make no admissions for any other purpose. *See, e.g., Brown v. Navarro*, No. 09-c-3814, 2012 WL 3987427, at *3 (N.D. Ill. Sept. 11, 2012) (citing multiple cases for the principle that facts deemed undisputed in a Local Rule 56.1 statement are not established for trial).

I. Parties and Background Regarding Electronic Vehicle Registration (“EVR”) Services

1. Plaintiff Motor Vehicle Software Corporation (“MVSC”), a privately-owned California corporation formed in 2005, provides electronic vehicle registration (electronic registration, license plates, and title, collectively “EVR”) services to franchise new car dealers (“dealers”) in the following four states: California (since 2005, where it has the exclusive endorsement of the state’s dealer association); Oregon (since 2015, where it is the only EVR provider); Virginia (since 2017); and Illinois (since 2018). MVSC Dkt. 76 (Second Am. Compl., “SAC”) ¶¶ 19, 74 (MVSC entered the California EVR market in 2005), *id.* ¶ 87 (MVSC is the leading provider in Oregon); Ex. 8,¹ Nemelka Tr. 37:2-21, 63:6-8, 258:9-23; Ex. 12, Armstrong Tr. 190:23-191:1; Ex. 7, J. Nemelka Decl. ¶ 25; Ex. 4, Klein Rpt. ¶¶ 9, 93, 104, 106; Ex. 154, Press Release, *California New Car Dealers Association (CNCDA) and DMVdesk Forge Powerful New Partnership*.

¹ Unless otherwise specified, “Ex.” refers to the exhibits to the Declaration of Leo D. Caseria, filed concurrently.

2. MVSC's web-based EVR applications ("apps"), called DMVdesk or Vitu, [REDACTED]
[REDACTED]
[REDACTED]. Ex. 8, Nemelka Tr. 86:25-88:13; Ex. 19, DX 76 (MVSC_MDL_0011869) at 871-872; MVSC Dkt. 76 (SAC) ¶ 62-63 (describing DMVdesk and Vitu).

3. Settling defendant Computerized Vehicle Registration, Inc. ("CVR") was founded in 1992 as a wholly owned 80/20 joint venture between settling defendant CDK Global, Inc. ("CDK") and defendant The Reynolds and Reynolds Company ("Reynolds"), respectively. Ex. 4, Klein Rpt. ¶ 11 ([REDACTED]); Ex. 14, Strawsburg Tr. 31:3-10 ([REDACTED]
[REDACTED]); Ex. 20, PX 1543 (CVR-0000230) at 243-244 ([REDACTED]); Ex. 14, Strawsburg Tr. 24:17-19 ([REDACTED]
[REDACTED]); MVSC Dkt. 76 (SAC) ¶ 7 ("CDK exercises substantial control over the decision-making and operations of CVR").

4. CVR once provided EVR services in as many as [REDACTED] states, and currently provides them in 18 states: Virginia (since 1993), California (since 1997), Wisconsin (since 1997), and Illinois (since 2005), as well as Alabama, Florida, Georgia, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, and West Virginia. Ex. 15, Medina 30(b)(6) (CVR) Tr. 25:13-26:17; Ex. 161, CVR, *About Us*; Ex. 162, CVR, *Solutions*; Ex. 48, CVR-0309005 at 007-008, 011-012.

5. EVR providers partner with state DMVs to provide EVR services to dealers, and must first obtain state approval – the requirements of which vary by state – before being able to provide EVR services in that particular state. MVSC Dkt. 76 (SAC) ¶ 2; Ex. 1, Israel Rpt. ¶¶ 60, 62;

Ex. 8, Nemelka Tr. 38:24-39:22. *See also, e.g., id.* at 255:15-257:16 ([REDACTED]

[REDACTED]

[REDACTED]).

6. Certain states – including California (as of January 1, 2019), Illinois, and Virginia – require EVR transactions to be initiated at the point of sale, *i.e.*, during the sale of the vehicle at the dealership (“point-of-sale states”). Ex. A, Rubinfeld Rebuttal Rpt. ¶ 24 & n.11;² Ex. 7, J. Nemelka Decl. ¶ 8.

7. Other states – including California (before January 1, 2019) and Wisconsin – do not require EVR to be initiated at the point of sale. *E.g.*, Ex 6, Klein Tr. 305:14-17 ([REDACTED] [REDACTED]); Ex. 8, Nemelka Tr. 56:4-57:9 ([REDACTED] [REDACTED]).

8. Each state has its own EVR approval process, fees, and regulations, and an EVR provider in one state cannot necessarily provide EVR services in another state. Ex. 1, Israel Rpt. ¶¶ 62-63; MVSC Dkt. 76 (SAC) ¶ 50; Ex. 8, Nemelka Tr. 94:11-95:4, 95:18-96:18; Ex A, Rubinfeld Rebuttal Rpt. ¶¶ 24, 52, 54.

II. Multiple Ways to Access Data to Process EVR Transactions

9. Three categories of data are needed to process EVR transactions: (1) car buyer identification; (2) vehicle identification; and (3) financing information, which includes Personal Identifiable Information (“PII”), such as addresses and drivers’ license numbers, and Non-Public Personal Information (“NPPI”), such as financing information, subject to various state and federal data protection and privacy laws. MVSC Dkt. 76 (SAC) ¶ 47; Ex. 1, Israel Rpt. ¶ 60; Ex. A,

² Ex. A, Rubinfeld Rebuttal Report, is attached to the Declaration of Daniel L. Rubinfeld submitted in support of this motion, filed concurrently.

Bresnahan Rebuttal Rpt. ¶ 49;³ Ex. 9, R. Schaefer Decl. [Auth. Dkt. 97] ¶¶ 21-25; Ex. 8, Nemelka Tr. 59:4-21, 59:24-60:4.

10. This data can be accessed from a dealer's Dealer Management System ("DMS") in multiple ways: (1) through certified integration from the DMS provider, *e.g.*, Reynolds Certified Interface ("RCI") or CDK's Third Party Access ("3PA") programs; (2) through manual reporting tools built into the DMS that allow dealers to export and transmit reports to third party apps of their choosing; and (3) by "hostile integrators" like Authenticom.⁴ *See* Ex. 8, Nemelka Tr. 45:11-14, 46:8-13, 47:10-48:19; MVSC Dkt. 76 (SAC) ¶ 172 (manual reporting tools allow dealers to run a script that creates a report, the report is placed in a folder on the dealership's local hard drive, and then is transferred to a third party app); Ex. A, Bresnahan Rebuttal Rpt. ¶ 62.

III. No Evidence of Conspiracy

A. MVSC Has Always Been Able to Access Reynolds DMS Data Through Manual Reporting Tools Built into the Reynolds DMS

11. MVSC has been able to receive DMS data through manual reporting tools such as Reynolds's Dynamic Reporting (or prior Reynolds's reporting tools such as Query Builder), and these tools were all MVSC needed to obtain DMS data in non-point-of-sale states, including California before January 1, 2019 and Wisconsin:

Real-time access to dealer data (and participation in the 3PA and RCI programs) has therefore not been necessary in California. Instead, MVSC was able to obtain the required dealer data by other means. . . . [including] through a manual workaround whereby dealers ran a daily report with the necessary data and then transmitted the information to MVSC.

³ Ex. A, Bresnahan Rebuttal Rpt., is attached to the Declaration of Timothy F. Bresnahan submitted in support of this motion, filed concurrently.

⁴ As used herein, "hostile integrators" refer to an entity described in Defendants' Joint Statement of Common Undisputed Material Facts in Support of Their Motions for Summary Judgment ("JSUF"), ¶¶ 82, 140, filed concurrently. *See also* MVSC Dkt. 76 (SAC) ¶ 13 (defining "data 'integrators'").

MVSC Dkt. 76 (SAC) ¶ 9; *see also* Ex. 8, Nemelka Tr. 56:4-19.

12. [REDACTED]

[REDACTED]:

[REDACTED]

* * *

[REDACTED]

* * *

[REDACTED]

Ex. 21, DX 100 (MVSC_MDL_0063257) at 258-259; Ex. 50, MVSC_MDL_0050295 at 295; Ex. 51, MVSC_MDL_0049289 at 289, respectively (all emphases in original).

13. [REDACTED]

[REDACTED]

[REDACTED] *E.g.*, Ex. 52, MVSC_MDL_0025901 at 902 (relevant portions highlighted) ([REDACTED])

[REDACTED]

[REDACTED]); Ex. 53,

MVSC_MDL_0028510 at 511 ([REDACTED])

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]); Ex. 54,

MVSC_MDL_0042223 at 223 ([REDACTED])

[REDACTED]); Ex. 22, DX 304 (MVSC_MDL_0078314) at 314 ([REDACTED])

[REDACTED]

[REDACTED]; MVSC Dkt. 76 (SAC) ¶ 173 (many dealers use manual reporting tools to retrieve necessary data from their DMS).

14. [REDACTED]

[REDACTED]. Ex. 8, Nemelka Tr. 170:20-171:4 [REDACTED]

[REDACTED]; *id.* at 236:6-16, 236:25-237:9 (accord).

15. [REDACTED]. Ex. 23, DX 288 (MVSC_MDL_0025987) at 987 [REDACTED]

[REDACTED]; Ex. 16, Bulusu Tr. 161:24-162:1. *See also* Ex. 55, MVSC_MDL_0025092 at 092 [REDACTED]

[REDACTED]; Ex. 24, DX 289 (MVSC_MDL_0045950) at 950 ([REDACTED]

[REDACTED]).

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* * *

[REDACTED]

* * *

[REDACTED]

* * *

[REDACTED]

Ex. 25, DX 99 (MVSC_MDL_0009708) at 708; Ex. 56, MVSC_MDL_0009716 at 716; Ex. 57, MVSC_MDL_0068528 at 528; Ex. 26, DX 98 (MVSC_MDL_0049511) at 511, respectively. *See also* Ex. 58, MVSC_MDL_0083475 at 475 ([REDACTED]
[REDACTED]); Ex. 146, MVSC_MDL_0082067 at 069 (same); Ex. 147, CDK-1379766 at 767 ([REDACTED]
[REDACTED]).

17. [REDACTED]

[REDACTED] Ex. 27, DX 286 (MVSC_MDL_0000970) at 974 ([REDACTED]
[REDACTED]); Ex. 24, DX 289 (MVSC_MDL_0045950) at 953 ([REDACTED]).

18. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Ex. 12, Armstrong Tr. 122:24-123:6; Ex. 7, J. Nemelka Decl. ¶¶ 9, 11; Ex. A, Bresnahan Rebuttal

Rpt. ¶¶ 364-65; Ex. 16, Bulusu Tr. 211:24-213:4 ([REDACTED])
 [REDACTED]
 [REDACTED]
 [REDACTED]); *id.* at 220:19-221:9 ([REDACTED])
 [REDACTED]); Ex. 28, DX 293 (MVSC_MDL_0079468) at 468
 ([REDACTED]).

19. [REDACTED]

[REDACTED]. Ex. 7, J. Nemelka Decl. ¶¶ 9, 11; Ex. 1, Israel Rpt. ¶ 190
 [REDACTED]
 [REDACTED]
 [REDACTED]); Ex. 4, Klein Rpt. ¶ 35; Ex. 6, Klein Tr. 297:17-25; Ex. 8, Nemelka Tr. 205:1-
 10 ([REDACTED])
 [REDACTED]); *id.* at 250:4-18 ([REDACTED])
 [REDACTED]); Ex. 25, DX 99
 (MVSC_MDL_0009708) at 708 ([REDACTED])
 [REDACTED]); Ex. 16, Bulusu Tr. 191:15-192:15, 194:17-195:18 ([REDACTED])
 [REDACTED]).

20. [REDACTED]. Ex. 6, Klein Tr. 298:2-6.

B. Other EVR Providers Also Use Manual Reporting Tools to Process EVR Transactions

21. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]. See Ex. 60, REYMDL00666070 at 074 ([REDACTED]); Ex. 14, Strawsburg Tr. 60:10-61:9 (accord); Ex. 61, REYMDL00596446 at 447 ([REDACTED]); Ex. 15, Medina 30(b)(6) (CVR) Tr. 45:11-16, 146:8-147:24 ([REDACTED]); Ex. 62, REYMDL00118294 at 299; Ex. 15, Medina 30(b)(6) (CVR) Tr. 80:24-81:19; Ex. 63, REYMDL00134216 at 229, 232.

22. [REDACTED]

[REDACTED]

[REDACTED].

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 64, REYMDL00568127 at 128 ([REDACTED]); Ex. 17, Green 30(b)(6) (Cox) Tr. 236:4-238:10 ([REDACTED]).

24. Dealertrack RTS provides EVR services in 15 states: Pennsylvania and Connecticut (where it is the leading provider in both states), and California, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Virginia, Wisconsin; competes with CVR in 12 states (including California, Illinois, Wisconsin, and Virginia, where

MVSC also competes); [REDACTED]; and has the exclusive endorsement of the automobile associations in Pennsylvania, Wisconsin, Virginia, New York, New Jersey, Louisiana, and Indiana. *Compare* Ex. 155, Dealertrack, *In-State Registration and Title Solutions* at 4-6, 10-16, with Ex. 162, CVR, *CVR Solutions*; Ex. 48, CVR-0309005 at 010 and 021; Ex. 60, REYMDL00666070 at 074.

C. Reynolds Never Refused to Deal with MVSC, and Its Fee Proposals to MVSC Were Nondiscriminatory

1. MVSC's RCI Application Process

25. [REDACTED]
[REDACTED]
[REDACTED]. Ex. 29, DX 88 (MVSC_MDL_0009749) at 749-750.

26. [REDACTED]
[REDACTED]
[REDACTED]. *See* Ex. 66, MVSC_MDL_0056485; Ex. 67, MVSC_MDL_0056968 at 968-970.

27. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *See* Ex. 68, REYMDL00037507 ([REDACTED])
[REDACTED]); Ex. 69, REYMDL01076538 ([REDACTED]);
Ex. 70, MVSC_MDL_0009439 at 440 ([REDACTED])

[REDACTED]
[REDACTED]); Ex. 71, MVSC_MDL_0003567 at 619.

28. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Ex. 30, DX 91
(MVSC_MDL_0000608) at 609.

29. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Ex. 30, DX 91
(MVSU_MDL_0000608) at 609-610; Ex. 31, DX 92 (MVSC_MDL_0000779) at 782.

30. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. *See, e.g.*, Ex. 8, Nemelka Tr.

184:16-185:8 ([REDACTED])

[REDACTED]); *id.* at 185:9-186:4 ([REDACTED])

[REDACTED]); *id.* at 189:19-190:8 ([REDACTED])

[REDACTED]; *id.* at 190:10-13 ([REDACTED])

[REDACTED]; Ex. 16, Bulusu Tr. 121:8-11

([REDACTED]). *See also*

Ex. 70, MVSC_MDL_0009439 at 440 ([REDACTED])

[REDACTED]).

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 31, DX

92 (MVSC_MDL_0000779) at 779; Ex. 8, Nemelka Tr. 196:7-197:1.

32. [REDACTED]

[REDACTED]

[REDACTED].

Ex. 32, DX 93 (MVSC_MDL_0002478) at 479 ([REDACTED]

[REDACTED]); Ex 72, MVSC_MDL_0002834 at 834; Ex. 70,

MVSC_MDL_0009439 at 440.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 73,

MVSC_MDL_0003763 at 764-765.

34. [REDACTED]

[REDACTED]. Ex. 33, DX 94
(MVSC_MDL_0021969) at 969 [REDACTED]

[REDACTED]). *See also* Ex. 74, MVSC_MDL_0020604 at 604 [REDACTED]

[REDACTED]); Ex. 8, Nemelka Tr. 184:16-185:8, 185:9-186:4, 189:19-190:8,

190:10-13 ([REDACTED])

[REDACTED]; Ex. 16, Bulusu Tr. 121:8-11 (accord); Ex. 70, MVSC_MDL_0009439 at 440 ([REDACTED]).

35. [REDACTED]
[REDACTED]
[REDACTED]. Ex. 75, MVSC_MDL_0003940 at 940-941; Ex. 12, Armstrong Tr. 152:21-24; Ex. 9, R. Schaefer Decl. [Auth. Dkt. 92] ¶ 62; Ex. 33, DX 94 (MVSC_MDL_0021969) at 969 ([REDACTED]); Ex. 2, Israel Reply Rpt. ¶ 243; Ex. A, Bresnahan Rebuttal Rpt. ¶¶ 352-56; Ex. A, Rubinfeld Rebuttal Rpt. ¶¶ 77, 78.

36. [REDACTED]
[REDACTED]
[REDACTED] Ex. 75, MVSC_MDL_0003940 at 940; Ex. 76, MVSC_MDL_0081810 at 810 ([REDACTED]).

2. Other EVR Providers that Compete Against CVR and MVSC Have Joined RCI

37. EVR provider Title Technologies, LLC (“TitleTec”) has been in RCI [REDACTED]; competes with CVR in all six states TitleTec operates in: Florida and Georgia (both states where TitleTec has the exclusive endorsement of the automobile associations and [REDACTED]), as well as Virginia (where MVSC also operates), Maryland, Pennsylvania, and South Carolina; and [REDACTED] Ex.

18, Goroff 30(b)(6) (TitleTec) Tr. 24:24-25:2, 33:13-35:8, 48:9-15; Ex. 162, CVR, *CVR Solutions*; Ex. 34, DX 95 (MVSC_MDL_0021707) ([REDACTED]); Ex. 48, CVR-0309005 at 012, 019 ([REDACTED]); Ex. 60, REYMDL00666070 at 074 ([REDACTED]); Ex. 68, REYMDL00037507 ([REDACTED]).

38. EVR provider AIB, Inc. (“AIB”) has been in RCI [REDACTED]. *See* Ex. 68, REYMDL00037507 ([REDACTED]).

39. EVR provider DLRdmv LLC (“DLRdmv”), founded in 2017, has been in RCI [REDACTED] and competes with CVR in Florida (where DLRdmv has been the market leader since 2018) and Georgia. *See* Ex. 18, Goroff 30(b)(6) (TitleTec) Tr. 100:22-101:19; Ex. 68, REYMDL00037507 ([REDACTED]); Ex. 69, REYMDL01076538 ([REDACTED]) (same); Ex. 156, DLRdmv Press Release, *DLRdmv Becomes Florida’s Number One Provider of Electronic Titling Solutions* (as of November 2018, DLRdmv was the leading EVR provider in Florida, and the fastest-growing provider in both Florida and Georgia).

40. EVR provider Auto Data Direct, Inc. (“ADD”) has been in RCI [REDACTED], and has competed with CVR in Florida. *See* Ex. 69, REYMDL01076538 ([REDACTED]); Ex. 48, CVR-0309005 at 011-012.

41. EVR provider DDI Technology (also known as Decision Dynamics, Inc., “DDI”) has been in RCI [REDACTED] and competes with CVR in all four states DDI operates in: South Carolina

(where DDI is endorsed by the South Carolina dealers association), Florida, Georgia, and Indiana.

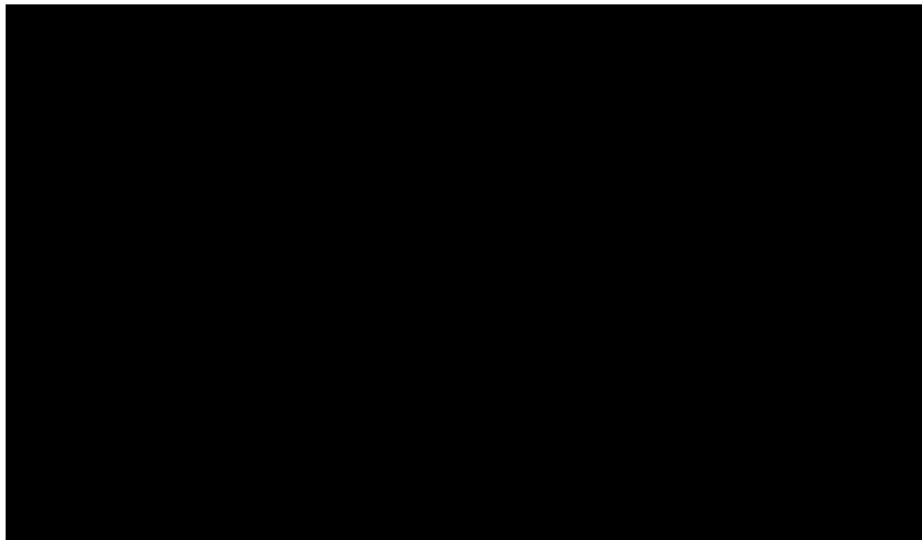
Ex. 77, REYMDL01076537 [REDACTED]

[REDACTED]); Ex. 157, RCI Third Party List, *Vehicle Registration*; Ex. 158, DDI Technology, *Premier EVR*.

42. [REDACTED]

[REDACTED]

[REDACTED]



Ex. A, Bresnahan Rebuttal Rpt., Fig. 24. *See also id.* ¶ 388 ([REDACTED])

[REDACTED]

[REDACTED]).

43. [REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

Ex. 8, Nemelka Tr. 221:13-18.

44. In 2014, new vehicle registrations in California represented 11.3% of all new vehicle registrations nationwide whereas new vehicle registrations in Florida, Pennsylvania, Georgia, Virginia, Maryland, and South Carolina combined represented 19.9% of all new vehicle registrations nationwide. Ex. 152, National Automobile Dealers Association, *NADA Data 2014* at 16.

D. Reynolds Did Not Provide Preferential Treatment to CVR

45. [REDACTED]

[REDACTED]

[REDACTED] Ex. 78, REYMDL00500165 at 165.

46. [REDACTED] CVR acquired California EVR provider AVRS in 2015, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 79, REYMDL00101792 at 793. *See also* Ex. 83, REYMDL00500766 at 767 ('[REDACTED]

[REDACTED]

[REDACTED]); Ex. 49, MVSC_MDL_0072361 at 362 ([REDACTED]).

47. [REDACTED]

[REDACTED]

[REDACTED]

Ex. 80, CVR-0061255 at 255; *id.* ([REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

48. [REDACTED]

[REDACTED].

Ex. 59, REYMDL00597237 at 237. *See also* Ex. 65, REYMDL00118382 at 382 ([REDACTED])

[REDACTED]

[REDACTED]); Ex. 81, CVR-0013917 at 917 ([REDACTED])

[REDACTED]); Ex.

82, CVR-0069882 at 882 ([REDACTED])

[REDACTED]

[REDACTED]).

49. [REDACTED]

[REDACTED]

[REDACTED]. Ex. 84, REYMDL00109808 ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]); Ex. 148, REYMDL00071109 at

109 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]); Ex. 85, REYMDL00159230 ([REDACTED])

[REDACTED]

[REDACTED]); Ex. A, Bresnahan Rebuttal Rpt ¶ 346 n.390 ([REDACTED])

[REDACTED]).

50. [REDACTED]

[REDACTED]. Ex. 86, REYMDL00597222 at 226 ([REDACTED]); Ex. 61, REYMDL00596446 at 447 ([REDACTED]).

E. MVSC Had a Different Experience When It Attempted to Join CDK's 3PA Program

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 87, MVSC_MDL_0000669 at 669 ([REDACTED]); Ex. 88, MVSC_MDL_0002159 at 160-161 ([REDACTED]); Ex. 35, DX 106 (CDK-3009134) at 134 ([REDACTED]); Ex. 89, MVSC_MDL_0021478 at 478 ([REDACTED]); Ex. 90, MVSC_MDL_0005263 at 263 ([REDACTED]); Ex. 36, DX 97 (MVSC_MDL_0007362) at 365 ([REDACTED]); Ex. 91, MVSC_MDL_0009322 at 328 ([REDACTED]); Ex. 37, DX 108 (MVSC_MDL_0068017) at 017 ([REDACTED]); *id.* at 017, 019 ([REDACTED]).

[REDACTED]. [REDACTED], Ex. 92, MVSC_MDL_0009690 at 690, but did not receive a substantive response from CDK. MVSC Dkt. 76 (SAC) ¶ 125.

52. [REDACTED]
[REDACTED] Ex. 8,

Nemelka Tr. 242:21-244:4.

F. There Was No Agreement Between Reynolds and CDK to Deny MVSC Admission into Their Respective Certified Interface Programs

53. [REDACTED]
[REDACTED]
[REDACTED] Ex. 93, CDK-0002272 at 380.

54. [REDACTED]
[REDACTED]
[REDACTED] Ex. 94, MVSC_MDL_0049305 at
305.

G. Reynolds Did Not Conspire with CDK to Block MVSC's Access to Data Through Hostile Integrators

1. MVSC Did Not Rely on Hostile Integrators to Access Data from the Reynolds DMS

55. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Ex. 16, Bulusu Tr. 45:8-46:22 ([REDACTED]
[REDACTED]); Ex. 39, DX 87 (MVSC_MDL_0055337) at 339 ([REDACTED]
[REDACTED]); Ex. 16, Bulusu Tr. 74:2-76:4 ([REDACTED]
[REDACTED]); *id.* at 25:5-8,
27:3-28:2 ([REDACTED])

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[REDACTED]); Ex. 95, MVSC_MDL_0085686 at 686 ([REDACTED]); Ex. 38, DX 587 (MVSC_MDL_0069953) ([REDACTED]); Ex. 12, Armstrong Tr. 172:8-173:21 ([REDACTED] [REDACTED]).

56. [REDACTED]
[REDACTED] Ex. 98, MVSC_MDL_0013203 at 203, [REDACTED]
[REDACTED], Ex. 16, Bulusu Tr. 100:18-24. *See also* Ex. 40, DX 280 (MVSC_MDL_0002456) at 456 ([REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]); Ex. 16, Bulusu Tr. 91:4-92:1 ([REDACTED]
[REDACTED]).

57. [REDACTED]
[REDACTED]
[REDACTED]
Ex. 96, MVSC_MDL_0055834 at 835; *see also id.* [REDACTED]
[REDACTED]); Ex. 97, MVSC_MDL_0038592 at 592 [REDACTED]
[REDACTED]).

58. [REDACTED]
[REDACTED]

PUBLIC VERSION

[REDACTED]. Ex. 16, Bulusu Tr. 45:8-46:15 ([REDACTED]
 [REDACTED]); *id.* at 99:13-15 ([REDACTED]
 [REDACTED]; Ex. 99,
 MVSC_MDL_0016150 at 152 [REDACTED]
 [REDACTED]
 [REDACTED]); Ex. 100, PROQ-08407
 at 407 ([REDACTED]
 [REDACTED]); Ex. 101, MVSC_MDL_0066246 at 246 ([REDACTED]
 [REDACTED]); Ex. 102,
 MVSC_MDL_0040855 at 856 (relevant portions highlighted) ([REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]); Ex. 103, MVSC_MDL_0052909 at 912 ([REDACTED]
 [REDACTED]); Ex. 104, MVSC_MDL_0075209 at 210 ([REDACTED]
 [REDACTED]); Ex. 105, PROQ-00365 at 365-366 ([REDACTED]).

2. MVSC's Use of Hostile Integrators Created Security Risks

59. [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED] Ex. 8,
 Nemelka Tr. 146:22-157:13; *id.* at 156:7-8 [REDACTED]
 [REDACTED]); Ex. 41, DX 84 (MVSC_MDL_0037783) at 783-784; Ex. 42, DX 85
 (MVSC_MDL_0037785) at 387; Ex. 106, MVSC_MDL_0013434 at 434; Ex. 107,
 MVSC_MDL_0037084 at 085, at 2, 4, 6, 8, 10 (relevant portions highlighted); Ex. 108,

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MVSC_MDL_0037917 at 917; Ex. 109, MVSC_MDL_0039956 at 957; Ex. 110, MVSC_MDL_0036106 at 106; Ex. 111, MVSC_MDL_0010350 at 350; Ex. 112, MVSC_MDL_0026953 at 953; Ex. 113, MVSC_MDL_0065775 at 775-777; Ex. 114, MVSC_MDL_0038717 at 717; Ex. 115, MVSC_MDL_0038188 at 188-189; Ex. 116, MVSC_MDL_0039140 at 140-141; Ex. 117, MVSC_MDL_0040327 at 328; Ex. 118, PROQ-14048 at 048; Ex. 119, MVSC_MDL_0075098 at 098. *See also* Ex. 120, MVSC_MDL_0046997 at 999 (

[REDACTED]

[REDACTED]).

60. [REDACTED]

[REDACTED]:

[REDACTED]

Ex. 42, DX 85 (MVSC_MDL_0037785) at 786 (capitalization in original).

H. Reynolds Did Not Conspire with CDK and CVR to Spread False Messages About MVSC

61. [REDACTED]

[REDACTED]

[REDACTED]. *See, e.g.*, MVSC Dkt. 76 (SAC) ¶¶

158-161, 170, 181-184 (specific factual allegations only against CDK and/or CVR); Ex. 12, Armstrong Tr. 250:4-7, 17-24 [REDACTED] Ex. 43, DX 591 (MVSC_MDL_0052246) [REDACTED]

[REDACTED]); Ex 99, MVSC_MDL_0016150 at 150; Ex. 121, MVSC_MDL_0062032 at 032; Ex. 122, MVSC_MDL_0016157 at 159-160; Ex. 123, MVSC_MDL_0022425 at 425; Ex. 124, MVSC_MDL_0071323 at 323; Ex. 125, MVSC_MDL_0009806 at 806, 809; Ex. 25, DX 99 (MVSC_MDL_0009708) at 708-709; Ex. 126,

MVSC_MDL_0051362 at 363; Ex. 56, MVSC_MDL_0009716 at 716; Ex. 127, MVSC_MDL_0051364 at 364-365; Ex. 128, MVSC_MDL_0075688 at 689; Ex. 1, Israel Rpt. ¶ 161 n.243 ([REDACTED]).

IV. MVSC Suffered No Harm Caused by an Alleged Conspiracy

A. MVSC Has Not Been Harmed In California Where Its Market Share Increased Significantly Throughout the Alleged Conspiracy Period While CVR's Share Decreased

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 10, 2019_06 BPA TTC Breakdown [REDACTED]

[REDACTED]; *id.* at 6 (relevant portions highlighted) ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]). *See also* Ex. A, Bresnahan Rebuttal Rpt. ¶ 368 & n.439 ([REDACTED])

[REDACTED]

[REDACTED]; Ex. 6, Klein Tr. 252:3-9 ([REDACTED])

[REDACTED]).

63. MVSC announced in April 2014 that it was the number one EVR provider in California among dealers, [REDACTED]

[REDACTED]. Ex. 129, MVSC_MDL_0059367 at 368; Ex. 130, MVSC_MDL_0004902

at 903 ([REDACTED]); Ex. 131, MVSC_MDL_0022892 at 895 ([REDACTED]); Ex. 132, MVSC_MDL_0004970 at 970 ([REDACTED]); Ex. 133, MVSC_MDL_0007360 at 360 ([REDACTED]).

B. MVSC Raised Prices in the Virginia EVR Market from \$ [REDACTED] to \$ [REDACTED]

64. [REDACTED]
[REDACTED]
[REDACTED]. Ex. 7, J. Nemelka Decl. ¶ 26; Ex. 11, PL by State [REDACTED];
Ex. 4, Klein Rpt. ¶ 106 & n.110 ([REDACTED]).

65. [REDACTED]
[REDACTED]. Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 68:9-22; Ex. 6, Klein Tr. 158:6-12 (same).

C. Wisconsin Was Closed to New EVR Providers and Refused to Authorize MVSC as an EVR Provider

66. When MVSC first reached out to Wisconsin in June 2013 about becoming an authorized EVR provider, State officials told MVSC that the State “rarely add[s] new vendors due

to the massive start-up resources we need to dedicate from our side.” Ex. 44, DX 1211 at 2.

67. MVSC submitted a formal application for approval to the Wisconsin EVR (“APPS”) program in May 2014, which the Wisconsin DMV denied in August 2014 for the following reasons:

Technical support needed from the DMV. . . . Adding any new title/registration vendor requires extensive resources from DMV for start-up programming and testing

* * *

Lack of program expansion to benefit DMV and the Wisconsin consumer. . . . It is unlikely that adding a new vendor would increase the number of participants in the program, because Wisconsin dealerships have been processing title applications electronically since legally mandated in 2007. . . . Adding an additional title/registration vendor without expanding the locations participating in the APPS program offers no benefit to either DMV or our customer, the Wisconsin motorist. In fact, dealers and agents that switch vendors require significant time from DMV to facilitate the process.

Ex. 45, DX 1212 at 1-2 (emphases in original); Ex. 134, MVSC_MDL_0059169 at 169 ([REDACTED]). Ex. 135, MVSC_MDL_0062855 at 858-859.

68. MVSC was not the only EVR provider to be denied by the State of Wisconsin: [REDACTED] , and by 2015, six other EVR providers had expressed interest in entering the Wisconsin EVR market but had been rejected by the State. Ex. 136, MVSC_MDL_0060313 at 313; Ex. 149 (Wisconsin’s Fiscal Estimate for Adding Title/Registration Vendor) at 2 (the DMV rejected the applications of three EVR providers on the same bases it denied MVSC, *i.e.*, the amount of DMV resources it would require and the lack of anticipated benefit to the DMV or consumers, and told three others to not even bother applying).

69. The State of Wisconsin was not accepting new EVR providers and was considering the possibility of potentially authorizing new EVR providers in 2019, as described in a letter that Wisconsin’s DMV sent to MVSC in February 2017:

In recent years you [MVSC] have requested to partner with the Wisconsin Department of Transportation and become a recognized vendor for [EVR] transactions. **At the time of your request the department was not accepting new vendors into [its] program.** I'm pleased to announce the department will be embarking on a new path that will allow additional vendors to participate in this program.

* * *

We are still developing a definitive timetable, but **our goal to implement new vendors into the program is early 2019.**

Ex. 46, DX 1213 (emphasis added); Ex. 150 (Email Re: DMV Desk Update, Apr. 9, 2019) at 2 (as of the last known update from the Wisconsin DMV in March 2019, the DMV's timeline for accepting new providers was still in flux, and estimated at that time to be fall 2019); *see also* Ex. 45, DX 1212 at 2 ("We will certainly keep [MVSC's] proposal on file and reconsider it in the future **if we are in a position where it makes sense to add another title/registration vendor.**") (emphasis added).

70. The State of Wisconsin said that it was impressed with MVSC's "innovative" EVR app; [REDACTED]
[REDACTED]. Ex. 45, DX 1212 at 2 ("DMVdesk's proposal is very impressive and innovative."); Ex. 151 (Email Thread Re: DMVdesk, Thank You, Mar. 21, 2014) (Wisconsin's DOT remarking on MVSC's "very impressive program"); Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 69:22-70:1 ([REDACTED])
[REDACTED]; Ex. 6, Klein Tr. 158:6-12 (same).

71. CVR, Dealertrack RTS and e-MV11 (a state-owned app) operate in Wisconsin; [REDACTED]
[REDACTED]. Ex. 159, Wisconsin DOT, *Title and registration processing*; Ex. 137, MVSC_MDL_0054574 at 575.

D. Illinois's [REDACTED]
[REDACTED]

72. [REDACTED]. See Ex. 138,

MVSC_MDL_0012816 at 817; Ex. 8, Nemelka Tr. 255:4-9.

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Ex. 8, Nemelka Tr. 255:15-257:16; Ex. 140,

MVSC_MDL_0085980 at 983-984 ([REDACTED]).

74. [REDACTED]:

[REDACTED]

Ex. 139, MVSC_MDL_0063603 at 604.

75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 141, MVSC_MDL_0065747 at 747 [REDACTED]

[REDACTED]

[REDACTED]"); Ex. 142, MVSC_MDL_0084416.

76. [REDACTED]

[REDACTED] Ex. 143, MVSC_MDL_0086228 at 228 ([REDACTED]
[REDACTED]); Ex. 47, DX 102 ([REDACTED]); Ex. 4, Klein
Rpt. ¶ 104 ([REDACTED]).

77. [REDACTED]

[REDACTED] Ex. 13, Armstrong 30(b)(6) (MVSC) Tr. 69:8-12; Ex. 6, Klein Tr.
158:6-12 (same).

78. MVSC, CVR, Dealertrack RTS and Electronic License Service, LLC ("ELS") are approved EVR providers in Illinois; ELS is not in RCI. Ex. 160, Office of the Illinois Secretary of State, *Electronic Registration and Title (ERT) Service Providers*; Ex. 144, MVSC_MDL_0012050 at 052; *see* Ex. 157, RCI Third Party List, *Vehicle Registration*.

V. No Harm to Competition

79. [REDACTED]

[REDACTED]. *E.g.*, Ex. 145, MVSC_MDL_0027801 at 803 ([REDACTED]
[REDACTED]
[REDACTED]); Ex. 60, REYMDL00666070 at 074; Ex. 6, Klein Tr. 252:3-9; Ex. 48, CVR-0309005 at
007, 008, 010-012, 019, 021-022 ([REDACTED]
[REDACTED]).

VI. No Conspiracy or Damages After October 2019

80. MVSC settled with CDK in October 2019 and is now a member of CDK's 3PA program. Dkt. 778 (Stip. of Dismissal); Ex. 153, CDK, *3PA Partner List* at 4.

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Respectfully submitted,

/s/ Leo D. Caseria

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CERTIFICATE OF SERVICE

I, Leo D. Caseria, an attorney, hereby certify that on May 20, 2020, I caused a true and correct copy of the foregoing **DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ *Leo D. Caseria*

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